

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD A. EVANS

No. 1:20-cv-01317-DAD-SAB (PC)

Plaintiff,

v.

ADEKUNIE SHITTU, et al.,

Defendants.

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
PLAINTIFF'S REQUESTS FOR
INJUNCTIVE RELIEF, AND DENYING
PLAINTIFF'S MOTION FOR
COMPASSIONATE RELEASE

(Doc. Nos. 2, 6, 10, 16, 17)

Plaintiff Richard A. Evans is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 18, 2020, the assigned magistrate judge issued findings and recommendations, recommending that plaintiff's application to proceed *in forma pauperis* be denied and that he be required to pay the required \$402.00 filing fee in full to proceed with this action because: (1) he is subject to the three strikes bar under 28 U.S.C. § 1915(g); and (2) the allegations of plaintiff's complaint do not satisfy the "imminent danger of serious physical injury" exception to § 1915(g). (Doc. No. 6 at 2–3.) Those findings and recommendations were served on plaintiff and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 3.) Plaintiff filed objections on January 21, 2021, well after the time

1 provided in which to do so. (Doc. No. 24.) Therein, plaintiff appears to argue that his failure to
2 receive surgery on his varicose veins, his recent positive COVID-19 diagnosis, and a general
3 disregard for his health and safety by prison officials considered together place him in imminent
4 danger of serious physical injury. (*Id.*) The court finds that these objections do not alter the
5 conclusion reached by the pending findings and recommendations that plaintiff's application to
6 proceed *in forma pauperis* should be denied.

7 On September 25, 2020, and October 1, 2021, plaintiff filed separate requests for judicial
8 notice. (Doc. Nos. 8, 9.) Therein, plaintiff claims that he was referred for surgery on his varicose
9 veins in March 2020 but had not yet received the surgery. (*Id.*) The assigned magistrate judge
10 construed plaintiff's requests for judicial notice as requests for injunctive relief and issued
11 additional findings and recommendations, recommending plaintiff's requests be denied. (Doc.
12 No. 10.) Those findings and recommendations were served on plaintiff and contained notice that
13 any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 3.) To date,
14 no objections have been filed, and the time in which to do so has since passed.

15 On October 26, 2020, plaintiff filed a motion for compassionate release in this action.
16 (Doc. No. 16.) On October 28, 2020, the assigned magistrate judge issued findings and
17 recommendations, recommending that plaintiff's motion for release be denied because plaintiff
18 has not paid his filing fee and, additionally, a civil rights action filed pursuant to 42 U.S.C. §
19 1983 is not the appropriate vehicle by which to seek compassionate release from a California state
20 prison. (Doc. No. 17 at 3.) Those findings and recommendations were served on plaintiff and
21 contained notice that any objections thereto were to be filed within fourteen (14) days after
22 service. (*Id.* at 4.) Plaintiff filed objections on December 28, 2020. (Doc. No. 23.) Those
23 objections appear to repeat plaintiff's previous arguments while also raising arguments not
24 relevant to plaintiff's complaint.

25 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
26 *de novo* review of this case. Having carefully reviewed the entire file, the court finds the findings
27 and recommendations to be supported by the record and by proper analysis.

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1 Accordingly:

2 1. The findings and recommendations issued on September 18, 2020 (Doc. No. 6),
3 are adopted in full;

4 2. In accordance with 28 U.S.C. § 1915(g), plaintiff's application to proceed *in forma*
5 *pauperis* (Doc. No. 2) is denied;

6 3. Within twenty-one (21) days following service of this order, plaintiff shall pay the
7 \$402.00 filing fee in full to proceed with this action;

8 4. Plaintiff's failure to pay the filing fee within the specified time will result in the
9 dismissal of this action;

10 5. The findings and recommendations issued on October 6, 2020 (Doc. No. 10) are
11 adopted in full;

12 6. Plaintiff's requests for injunctive relief (Doc. Nos. 8, 9) are denied;

13 7. The findings and recommendations issued on October 28, 2020 (Doc. No. 17) are
14 adopted in full;

15 8. Plaintiff's motion for compassionate release (Doc. No. 16) is denied; and

16 9. This matter is referred back to the assigned magistrate judge for proceedings
17 consistent with this order.

18 IT IS SO ORDERED.

19 Dated: January 31, 2021



UNITED STATES DISTRICT JUDGE